

Appendix C

44 CFR Part 206 Subparts C and G-L

APPENDIX C

TABLE OF CONTENTS

<u>SUBPART C—EMERGENCY ASSISTANCE</u>	C-1
<u>§ 206.61 Purpose</u>	C-1
<u>§ 206.62 Available Assistance</u>	C-1
<u>§ 206.63 Provision of Assistance</u>	C-2
<u>§ 206.64 Coordination of Assistance</u>	C-2
<u>§ 206.65 Cost Sharing</u>	C-2
<u>§ 206.66 Limitation on Expenditures</u>	C-2
<u>§ 206.67 Requirement when Limitation is Exceeded</u>	C-3
<u>SUBPART G—PUBLIC ASSISTANCE PROJECT</u>	
<u>ADMINISTRATION</u>	C-3
<u>§ 206.200 General</u>	C-3
<u>§ 206.201 Definitions</u>	C-4
<u>§ 206.202 Application Procedures</u>	C-5
<u>§ 206.203 Federal Grant Assistance</u>	C-7
<u>§ 206.204 Project Performance</u>	C-8
<u>§ 206.205 Payment of Claims</u>	C-10
<u>§ 206.206 Appeals</u>	C-12
<u>§ 206.207 Administrative and Audit Requirements</u>	C-13
<u>§ 206.208 Direct Federal Assistance</u>	C-15
<u>SUBPART H—PUBLIC ASSISTANCE ELIGIBILITY</u>	C-18
<u>§ 206.220 General</u>	C-18
<u>§ 206.221 Definitions</u>	C-18
<u>§ 206.222 Applicant Eligibility</u>	C-20
<u>§ 206.223 General Work Eligibility</u>	C-21
<u>§ 206.224 Debris Removal</u>	C-21
<u>§ 206.225 Emergency Work</u>	C-22
<u>§ 206.226 Restoration of Damaged Facilities</u>	C-23
<u>§ 206.227 Snow Assistance</u>	C-27
<u>§ 206.228 Allowable Costs</u>	C-27

<u>SUBPART I—PUBLIC ASSISTANCE INSURANCE</u>	
<u>REQUIREMENTS</u>	C-30
<u>§ 206.250 General</u>	C-30
<u>§ 206.251 Definitions</u>	C-31
<u>§ 206.252 Insurance Requirements for Facilities</u> <u>Damaged by Flood</u>	C-32
<u>§ 206.253 Insurance Requirements for Facilities Damaged by</u> <u>Disasters Other than Floods</u>	C-33
<u>SUBPART J—COASTAL BARRIER RESOURCES ACT</u>	C-34
<u>§ 206.340 Purpose of Subpart</u>	C-34
<u>§ 206.341 Policy</u>	C-35
<u>§ 206.342 Definitions</u>	C-35
<u>§ 206.343 Scope</u>	C-37
<u>§ 206.344 Limitations on Federal Expenditures</u>	C-38
<u>§ 206.345 Exceptions</u>	C-38
<u>§ 206.346 Applicability to Disaster Assistance</u>	C-39
<u>§ 206.347 Requirements</u>	C-41
<u>§ 206.348 Consultation</u>	C-44
<u>§ 206.349 Consistency Determinations</u>	C-45
<u>SUBPART K—COMMUNITY DISASTER LOANS</u>	C-46
<u>§ 206.360 Purpose</u>	C-46
<u>§ 206.361 Loan Program</u>	C-47
<u>§ 206.362 Responsibilities</u>	C-48
<u>§ 206.363 Eligibility Criteria</u>	C-49
<u>§ 206.364 Loan Application</u>	C-51
<u>§ 206.365 Loan Administration</u>	C-54
<u>§ 206.366 Loan Cancellation</u>	C-56
<u>§ 206.367 Loan Repayment</u>	C-61



[SUBPART L—FIRE SUPPRESSION ASSISTANCE](#) C-62

[§ 206.390 General](#) C-62

[§ 206.391 FEMA-State Agreement](#) C-63

[§ 206.392 Request for Assistance](#) C-63

[§ 206.393 Providing Assistance](#) C-63

[§ 206.394 Cost Eligibility](#) C-64

[§ 206.395 Grant Administration](#) C-65

Subpart C-Emergency Assistance

Source: 55 FR 2296, Jan. 23, 1990, unless otherwise noted.

§ 206.61 Purpose.

The purpose of this subpart is to identify the forms of assistance which may be made available under an emergency declaration.

§ 206.62 Available Assistance.

In any emergency declaration, the Associate Director or Regional Director may provide assistance, as follows:

- (a) Direct any Federal agency, with or without reimbursement, to utilize its authorities and the resources granted to it under Federal law (including personnel, equipment, supplies, facilities, and managerial, technical and advisory services) in support of State and local emergency assistance efforts to save lives, protect property and public health and safety, and lessen or avert the threat of a catastrophe;
- (b) Coordinate all disaster relief assistance (including voluntary assistance) provided by Federal agencies, private organizations, and State and local governments;
- (c) Provide technical and advisory assistance to affected State and local governments for:
 - (1) The performance of essential community services;
 - (2) Issuance of warnings of risks or hazards;
 - (3) Public health and safety information, including dissemination of such information;
 - (4) Provision of health and safety measures; and
 - (5) Management, control, and reduction of immediate threats to public health and safety;
- (d) Provide emergency assistance under the Stafford Act through Federal agencies;
- (e) Remove debris in accordance with the terms and conditions of section 407 of the Stafford Act;
- (f) Provide temporary housing assistance in accordance with the terms and conditions of section 408 of the Stafford Act; and

- (g) Assist State and local governments in the distribution of medicine, food, and other consumable supplies, and emergency assistance.

§ 206.63 Provision of Assistance.

Assistance authorized by an emergency declaration is limited to immediate and short-term assistance, essential to save lives, to protect property and public health and safety, or to lessen or avert the threat of a catastrophe.

§ 206.64 Coordination of Assistance.

After an emergency declaration by the President, all Federal agencies, voluntary organizations, and State and local governments providing assistance shall operate under the coordination of the Federal Coordinating Officer.

§ 206.65 Cost Sharing.

The Federal share for assistance provided under this title shall not be less than 75 percent of the eligible costs.

§ 206.66 Limitation on Expenditures.

Total assistance provided in any given emergency declaration may not exceed \$5,000,000, except when it is determined by the Associate Director that:

- (a) Continued emergency assistance is immediately required;
- (b) There is a continuing and immediate risk to lives, property, public health and safety; and
- (c) Necessary assistance will not otherwise be provided on a timely basis.

§ 206.67 Requirement when Limitation is Exceeded.

Whenever the limitation described in § 206.66 is exceeded, the Director must report to the Congress on the nature and extent of continuing emergency assistance requirements and shall propose additional legislation if necessary.

§§ 206.68-206.100 [Reserved]**Subpart G-Public Assistance Project Administration**

Source: 55 FR 2304, Jan. 23, 1990, unless otherwise noted.

§ 206.200 General.

- (a) Purpose. This subpart establishes procedures for the administration of Public Assistance grants approved under the provisions of the Stafford Act.
- (b) Policy. It is a requirement of the Stafford Act that, in the administration of the Public Assistance Program, eligible assistance be delivered as expeditiously as possible consistent with Federal laws and regulations. The regulation entitled "Uniform Requirements for Grants and Cooperative Agreements to State and Local Governments", published at 44 CFR part 13, places certain requirements on the State in its role as grantee for the public assistance program. The intent of this "common rule" is to allow States more discretion in administering Federal programs in accordance with their own procedures and thereby simplify the program and reduce delays. FEMA also expects States to make subgrants with the requirements of the Stafford Act in mind. They are expected to keep subgrantees informed as to the status of their application including notification of FEMA's approvals of DSRs and an estimate of when payments will be made. Subgrantees should receive the full payment approved by FEMA, and the State contribution, as provided in

the FEMA-State Agreement, as soon as practicable after payment is approved. Payment of the State contribution must be consistent with State laws.

§ 206.201 Definitions.

- (a) Applicant means a State agency, local government, or eligible private nonprofit organization, as identified in Subpart H of this regulation, submitting an application to the Grantee for assistance under the State's grant.
- (b) Emergency work means that work which must be done immediately to save lives and to protect improved property and public health and safety, or to avert or lessen the threat of a major disaster.
- (c) Facility means any publicly or privately owned building, works, system, or equipment, built or manufactured, or an improved and maintained natural feature. Land used for agricultural purposes is not a facility.
- (d) Grant means an award of financial assistance. The grant award shall be based on the total eligible Federal share of all approved projects.
- (e) Grantee means the government to which a grant is awarded which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document. For purposes of this regulation, except as noted in Sec. 206.202, the State is the grantee.
- (f) Hazard mitigation means any cost effective measure which will reduce the potential for damage to a facility from a disaster event.
- (g) Permanent work means that restorative work that must be performed through repairs or replacement, to restore an eligible facility on the basis of its predisaster design and current applicable standards.
- (h) Predisaster design means the size or capacity of a facility as originally designed and constructed or subsequently modified by changes or additions to the original design. It does not mean the capacity at which the facility was being used at the

time the major disaster occurred if different from the most recent designed capacity.

- (i) Project (also referred to as individual project) means all work performed at a single site whether or not described on a single Damage Survey Report (DSR).
- (j) Project approval means the process where the RD signs an approval of work and costs on a DSR or group of DSRs. Such approval is also an obligation of funds to the grantee.
- (k) Subgrant means an award of financial assistance under a grant by a grantee to an eligible subgrantee.
- (l) Subgrantee means the government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided.

§ 206.202 Application Procedures.

- (a) General. This section describes the policies and procedures for processing grants for Federal disaster assistance to States. For purposes of this regulation the State is the grantee. The State is responsible for processing subgrants to applicants in accordance with 44 CFR parts 13, 14, and 206, and its own policies and procedures.
- (b) Grantee. The Grantee serves as the grant administrator for all funds provided under the Public Assistance grant program. The Grantee's responsibilities as they pertain to procedures outlined in this section include providing technical advice and assistance to eligible subgrantees, providing State support for damage survey activities, ensuring that all potential applicants are aware of assistance available, and submission of those documents necessary for grants award.
- (c) Notice of Interest (NOI). The Grantee must submit to the RD a completed NOI (FEMA Form 90-49) for each applicant requesting assistance. NOIs must be submitted to the RD within 30 days following designation of the area in which the damage is located.
- (d) Damage Survey Reports (DSRs).
 - (1) Damage surveys are conducted by an inspection team. An authorized local representative accompanies the inspection

team and is responsible for representing the applicant and ensuring that all eligible work and costs are identified. The inspectors prepare a Damage Survey Report-Data Sheet (FEMA Form 90-91) for each site. On the Damage Survey Report-Data Sheet the inspectors will identify the eligible scope of work and prepare a quantitative estimate for the eligible work. Any damage that is not shown to the inspection team during its initial visit shall be reported in writing to the Regional Director by the Grantee within 60 days after the initial visit.

- (2) When the estimate of work at a damage site is less than \$1000, such work is not eligible and a DSR will not be written. This minimum amount for a DSR shall be reviewed periodically by FEMA and adjusted through regulation as necessary.
- (e) Grant approval. Upon completion of the field surveys the Damage Survey Report-Data Sheets are reviewed and action is taken by the Regional Director (RD). This will be done within 45 days of the date of inspection or a written explanation of any delay will be provided to the grantee. Prior to the obligation of any funds the Grantee shall submit a Standard Form (SF) 424, Application for Federal Assistance, and SF 424D, Assurances for Construction Programs, to the RD. Following receipt of the SF 424 and 424D, the RD will then obligate funds to the State based upon the approved DSRs. The grantee shall then approve subgrants to the applying entities based upon DSRs approved for each applicant.
 - (f) Exceptions. The following are exceptions to the above outlined procedures and time limitations.
 - (1) Grant applications. An Indian tribe or authorized tribal organization may submit a SF 424 directly to the RD when assistance is authorized under the Act and a State is legally unable to assume the responsibilities prescribed in these regulations.
 - (2) Time limitations. The time limitations shown in paragraphs (c) and (d) of this section may be extended by the RD when justified and requested in writing by the Grantee. Such

justification shall be based on extenuating circumstances beyond the grantee's or subgrantee's control.

(Approved by the Office of Management and Budget under Control Numbers 3067-0033 and 0348-0043.)

[55 FR 2304, Jan. 23, 1990, as amended at 58 FR 47996, Sept. 14, 1993]

§ 206.203 Federal Grant Assistance.

- (a) General. This section describes the types and extent of Federal funding available under State disaster assistance grants, as well as limitations and special procedures applicable to each.
- (b) Cost sharing. All projects approved under State disaster assistance grants will be subject to the cost sharing provisions established in the FEMA-State Agreement and the Stafford Act.
- (c) Project funding
 - (1) Large projects. When the approved estimate of eligible costs for an individual project is \$35,000 or greater, Federal funding shall equal the Federal share of the actual eligible costs documented by a grantee. Such \$35,000 amount shall be adjusted annually to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.
 - (2) Small projects. When the approved estimate of costs for an individual project is less than \$35,000, Federal funding shall equal the Federal share of the approved estimate of eligible costs. Such \$35,000 amount shall be adjusted annually as indicated in paragraph (c)(1) of this section.
- (d) Funding options
 - (1) Improved projects. If a subgrantee desires to make improvements, but still restore the predisaster function of a damaged facility, the Grantee's approval must be obtained. Federal funding for such improved projects shall be limited to the Federal share of the approved estimate of eligible costs.

- (2) Alternate projects. In any case where a subgrantee determines that the public welfare would not be best served by restoring a damaged public facility or the function of that facility, the Grantee may request that the RD approve an alternate project.
- (i) The alternate project option may be taken only on permanent restorative work.
 - (ii) Federal funding for such alternate projects shall equal 90 percent of the Federal share of the approved estimate of eligible costs.
 - (iii) Funds contributed for alternate projects may be used to repair or expand other selected public facilities, to construct new facilities, or to fund hazard mitigation measures. These funds may not be used to pay the non-Federal share of any project, nor for any operating expense.
 - (iv) Prior to the start of construction of any alternate project the Grantee shall submit for approval by the RD the following: a description of the proposed alternate project(s); a schedule of work; and the projected cost of the project(s). The Grantee shall also provide the necessary assurances to document compliance with special requirements, including, but not limited to floodplain management, environmental assessment, hazard mitigation, protection of wetlands, and insurance.

§ 206.204 Project Performance.

- (a) General. This section describes the policies and procedures applicable during the performance of eligible work.
- (b) Advances of funds. Advances of funds will be made in accordance with 44 CFR 13.21, Payment.
- (c) Time limitations for completion of work
 - (1) Deadlines. The project completion deadlines shown below are set from the date that a major disaster or emergency is declared and apply to all projects approved under State disaster assistance grants.

Completion Deadlines

Type of Work	Months
Debris Clearance	6
Emergency Work	6
Permanent Work	18

(2) Exceptions.

- (i) The Grantee may impose lesser deadlines for the completion of work under paragraph (c)(1) of this section if considered appropriate.
- (ii) Based on extenuating circumstances or unusual project requirements beyond the control of the subgrantee, the Grantee may extend the deadlines under paragraph (c)(1) of this section for an additional 6 months for debris clearance and emergency work and an additional 30 months, on a project by project basis for permanent work.

(d) Requests for time extensions. Requests for time extensions beyond the Grantee’s authority shall be submitted by the Grantee to the RD and shall include the following:

- (1) The dates and provisions of all previous time extensions on the project; and
- (2) A detailed justification for the delay and a projected completion date. The RD shall review the request and make a determination. The Grantee shall be notified of the RD’s determination in writing. If the RD approves the request, the letter shall reflect the approved completion date and any other requirements the RD may determine necessary to ensure that the new completion date is met. If the RD denies the time extension request, the grantee may, upon completion of the project, be reimbursed for eligible project costs incurred only up to the latest approved completion date. If the project is not completed, no Federal funding will be provided for that project.

- (e) Cost overruns. During the execution of approved work a subgrantee may find that actual project costs are exceeding the approved DSR estimates. Such cost overruns normally fall into the following three categories:
- (1) Variations in unit prices;
 - (2) Change in the scope of eligible work; or
 - (3) Delays in timely starts or completion of eligible work. The subgrantee shall evaluate each cost overrun and, when justified, submit a request for additional funding through the grantee to the RD for a final determination. All requests for the RD's approval shall contain sufficient documentation to support the eligibility of all claimed work and costs. The grantee shall include a written recommendation when forwarding the request. The RD shall notify the Grantee in writing of the final determination. FEMA will not normally review an overrun for an individual small project. The normal procedure for small projects will be that when a subgrantee discovers a significant overrun related to the total final cost for all small projects, the subgrantee may submit an appeal for additional funding in accordance with Sec. 206.206 below, within 60 days following the completion of all of its small projects.
- (f) Progress reports. Progress reports will be submitted by the Grantee to the RD quarterly. The RD and Grantee shall negotiate the date for submission of the first report. Such reports will describe the status of those projects on which a final payment of the Federal share has not been made to the grantee and outline any problems or circumstances expected to result in noncompliance with the approved grant conditions.

[55 FR 2304, Jan. 23, 1990; 55 FR 5458, Feb. 15, 1990]

§ 206.205 Payment of Claims.

- (a) Small projects. Final payment of the Federal share of these projects shall be made to the Grantee upon approval of the project. The grantee shall make payment of the Federal share

to the subgrantee as soon as practicable after Federal approval of funding. Prior to the closeout of the disaster contract, the Grantee shall certify that all such projects were completed in accordance with FEMA approvals and that the State contribution to the non-Federal share, as specified in the FEMA-State Agreement, has been paid to each subgrantee. Such certification is not required to specify the amount spent by a subgrantee on small projects. The Federal payment for small projects shall not be reduced if all of the approved funds are not spent to complete a project. However, failure to complete a project may require that the Federal payment be refunded.

(b) Large projects.

- (1) The Grantee shall make an accounting to the RD of eligible costs for each approved large project. In submitting the accounting the Grantee shall certify that reported costs were incurred in the performance of eligible work, that the approved work was completed, that the project is in compliance with the provisions of the FEMA-State Agreement, and that payments for that project have been made in accordance with 44 CFR 13.21, Payments. Each large project shall be submitted as soon as practicable after the subgrantee has completed the approved work and requested payment.
- (2) The RD shall review the accounting to determine the eligible amount of reimbursement for each large project and approve eligible costs. If a discrepancy between reported costs and approved funding exists, the RD may conduct field reviews to gather additional information. If discrepancies in the claim cannot be resolved through a field review, a Federal audit may be conducted. If the RD determines that eligible costs exceed the initial approval, he/she will obligate additional funds as necessary.

§ 206.206 Appeals.

An eligible applicant, subgrantee, or grantee may appeal any determination previously made related to an application for or the provision of Federal assistance according to the procedures below.

- (a) **Format and Content.** The applicant or subgrantee will make the appeal in writing through the grantee to the Regional Director. The grantee shall review and evaluate all subgrantee appeals before submission to the Regional Director. The grantee may make grantee-related appeals to the Regional Director. The appeal shall contain documented justification supporting the appellant's position, specifying the monetary figure in dispute and the provisions in Federal law, regulation, or policy with which the appellant believes the initial action was inconsistent.
- (b) **Levels of Appeal.**
 - (1) The Regional Director will consider first appeals for public assistance-related decisions under subparts A through L of this part.
 - (2) The Associate Director/Executive Associate Director for Response and Recovery will consider appeals of the Regional Director's decision on any first appeal under paragraph (b)(1) of this section.
- (c) **Time Limits.**
 - (1) Appellants must file appeals within 60 days after receipt of a notice of the action that is being appealed.
 - (2) The grantee will review and forward appeals from an applicant or subgrantee, with a written recommendation, to the Regional Director within 60 days of receipt.
 - (3) Within 90 days following receipt of an appeal, the Regional Director (for first appeals) or Associate Director/Executive Associate Director (for second appeals) will notify the grantee in writing of the disposition of the appeal or of the need for additional information. A request by the Regional Director or Associate Director/Executive Associate Director for additional information will include a date by which the information must be provided. Within 90 days following the

receipt of the requested additional information or following expiration of the period for providing the information, the Regional Director or Associate Director/Executive Associate Director will notify the grantee in writing of the disposition of the appeal. If the decision is to grant the appeal, the Regional Director will take appropriate implementing action.

- (d) Technical Advice. In appeals involving highly technical issues, the Regional Director or Associate Director/Executive Associate Director may, at his or her discretion, submit the appeal to an independent scientific or technical person or group having expertise in the subject matter of the appeal for advice or recommendation. The period for this technical review may be in addition to other allotted time periods. Within 90 days of receipt of the report, the Regional Director or Associate Director/Executive Associate Director will notify the grantee in writing of the disposition of the appeal.
- (e) Transition.
- (1) This rule is effective for all appeals pending on and appeals from decisions issued on or after May 8, 1998, except as provided in paragraph (e)(2) of this section.
 - (2) Appeals pending from a decision of an Associate Director/Executive Associate Director before May 8, 1998 may be appealed to the Director in accordance with 44 CFR 206.440 as it existed before May 8, 1998 (44 CFR, revised as of October 1, 1997).
 - (3) The decision of the FEMA official at the next higher appeal level shall be the final administrative decision of FEMA.

[63 FR 17110, Apr. 8, 1998; 63 FR 24970, May 6, 1998]

§ 206.207 Administrative and Audit Requirements.

- (1) General. Uniform administrative requirements which are set forth in 44 CFR part 13 apply to all disaster assistance grants and subgrants.
 - (a) State administrative plan.

- (1) The State shall develop a plan for the administration of the Public Assistance program that includes at a minimum, the items listed below:
 - (i) The designation of the State agency or agencies which will have the responsibility for program administration.
 - (ii) The identification of staffing functions in the Public Assistance program, the sources of staff to fill these functions, and the management and oversight responsibilities of each.
 - (iii) Procedures for:
 - (A) Notifying potential applicants of the availability of the program;
 - (B) Conducting briefings for potential applicants and application procedures, program eligibility guidance and program guidelines;
 - (C) Assisting FEMA in determining applicant eligibility;
 - (D) Assisting FEMA in conducting damage surveys to serve as a basis for obligations of funds to subgrantees;
 - (E) Participating with FEMA in conducting damage surveys to serve as a basis for obligations of funds to subgrantees;
 - (F) Processing appeal requests, requests for time extensions and requests for approval of overruns, and for processing appeals of grantee decisions;
 - (G) Compliance with the administrative requirements of 44 CFR parts 13 and 206;
 - (H) Compliance with the audit requirements of 44 CFR part 14;
 - (I) Processing requests for advances of funds and reimbursement; and

- (J) Determining staffing and budgeting requirements necessary for proper program management.
- (2) The Grantee may request the RD to provide technical assistance in the preparation of such administrative plan.
- (3) In accordance with the Interim Rule published March 21, 1989, the Grantee was to have submitted an administrative plan to the RD for approval by September 18, 1989. An approved plan must be on file with FEMA before grants will be approved in a future major disaster. Thereafter, the Grantee shall submit a revised plan to the RD annually. In each disaster for which Public Assistance is included, the RD shall request the Grantee to prepare any amendments required to meet current policy guidance.
- (4) The Grantee shall ensure that the approved administrative plan is incorporated into the State emergency plan.

(c) Audit

- (1) Non-federal audit. For grantees or subgrantees, requirements for non-federal audit are contained in FEMA regulations at 44 CFR Part 14 or OMB Circular A§09110 as appropriate.
- (2) Federal audit. In accordance with 44 CFR part 14, Appendix A, Para. 10, FEMA may elect to conduct a Federal audit of the disaster assistance grant or any of the subgrants.

[55 FR 2304, Jan. 23, 1990; 55 FR 5458, Feb. 15, 1990]

§ 206.208 Direct Federal Assistance.

- (a) General. When the State and local government lack the capabilities to perform or to contract for eligible emergency work and/or debris removal, under sections 402(4), 403, or 407 of the Act, the Grantee may request that the work be accomplished by a Federal agency. Such assistance is subject

to the cost sharing provisions outlined in §206.203(b) of this subpart. Direct Federal assistance is also subject to the eligibility criteria contained in Subpart H of these regulations. FEMA will reimburse other Federal agencies in accordance with Subpart A of these regulations.

- (b) Requests for assistance. All requests for direct Federal assistance shall be submitted by the Grantee to the RD and shall include:
- (1) A written agreement that the State will:
 - (i) Provide without costs to the United States all lands, easements and rights-of-ways necessary to accomplish the approved work;
 - (ii) Hold and save the United States free from damages due to the requested work, and shall indemnify the Federal Government against any claims arising from such work;
 - (iii) Provide reimbursement to FEMA for the non-Federal share of the cost of such work in accordance with the provisions of the FEMA-State Agreement; and
 - (iv) Assist the performing Federal agency in all support and local jurisdictional matters.
 - (2) A statement as to the reasons the State and the local government cannot perform or contract for performance of the requested work.
 - (3) A written agreement from an eligible applicant that such applicant will be responsible for the items in subparagraph (b)(1)(i) and (ii) of this section, in the event that a State is legally unable to provide the written agreement.
- (c) Implementation.
- (1) If the RD approves the request, a mission assignment will be issued to the appropriate Federal agency. The mission assignment letter to the agency shall define the scope of eligible work. Prior to execution of work on any project, the RD shall prepare a DSR establishing the scope and estimated costs of eligible work. The Federal agency shall not exceed the approved funding limit without the authorization of the RD.
 - (2) If all or any part of the requested work falls within the

statutory authority of another Federal agency, the RD shall not approve that portion of the work. In such case, the unapproved portion of the request will be referred to the appropriate agency for action.

- (d) Time limitation. The time limitation for completion of work by a Federal agency under a mission assignment is 60 days after the President's declaration. Based on extenuating circumstances or unusual project requirements, the RD may extend this time limitation.
- (e) Project management.
 - (1) The performing Federal agency shall ensure that the work is completed in accordance with the RD's approved scope of work, costs and time limitations. The performing Federal agency shall also keep the RD and Grantee advised of work progress and other project developments. It is the responsibility of the performing Federal agency to ensure compliance with applicable Federal, State and local requirements. A final inspection report will be completed upon termination of all direct Federal assistance work. Final inspection reports shall be signed by a representative of the performing Federal agency and the State. Once the final eligible cost is determined (including Federal agency overhead), the State will be billed for the non-Federal share of the mission assignment in accordance with the cost sharing provisions of the FEMA-State Agreement.
 - (2) Pursuant to the agreements provided in the request for assistance the Grantee shall assist the performing Federal agency in all State and local jurisdictional matters. These matters include securing local building permits and rights of entry, control of traffic and pedestrians, and compliance with local building ordinances.

§§ 206.209-206.219 [Reserved]

Subpart H—Public Assistance Eligibility

Source: 55 FR 2307, Jan. 23, 1990, unless otherwise noted.

§ 206.220 General

This subpart provides policies and procedures for determinations of eligibility of applicants for public assistance, eligibility of work, and eligibility of costs for assistance under sections 402, 403, 406, 407, 418, 419, 421(d), 502 and 503 of the Stafford Act. Assistance under this subpart must also conform to requirements of 44 CFR part 206, subparts G—Public Assistance Project Administration, I—Public Assistance Insurance Requirements, J—Coastal Barrier Resources Act, and M—Hazard Mitigation Planning. Regulations under 44 CFR part 9—Floodplain Management and 44 CFR part 10—Environmental Considerations, also apply to this assistance.

§ 206.221 Definitions.

- (a) Educational institution means:
- (1) Any elementary school as defined by section 801(c) of the Elementary and Secondary Education Act of 1965; or
 - (2) Any secondary school as defined by section 801(h) of the Elementary and Secondary Education Act of 1965; or
 - (3) Any institution of higher education as defined by section 1201 of the Higher Education Act of 1965.
- (b) Force account means an applicant's own labor forces and equipment.
- (c) Immediate threat means the threat of additional damage or destruction from an event which can reasonably be expected to occur within five years.
- (d) Improved property means a structure, facility or item of equipment which was built, constructed or manufactured. Land used for agricultural purposes is not improved property.
- (e) Private nonprofit facility means any private nonprofit educational, utility, emergency, medical, or custodial care

facility, including a facility for the aged or disabled, and other facility providing essential governmental type services to the general public, and such facilities on Indian reservations. Further definition is as follows:

- (1) Educational facilities means classrooms plus related supplies, equipment, machinery, and utilities of an educational institution necessary or appropriate for instructional, administrative, and support purposes, but does not include buildings, structures and related items used primarily for religious purposes or instruction.
- (2) Utility means buildings, structures, or systems of energy, communication, water supply, sewage collection and treatment, or other similar public service facilities.
- (3) Emergency facility means those buildings, structures, equipment, or systems used to provide emergency services, such as fire protection, ambulance, or rescue, to the general public, including the administrative and support facilities essential to the operation of such emergency facilities even if not contiguous.
- (4) Medical facility means any hospital, outpatient facility, rehabilitation facility, or facility for long term care as such terms are defined in section 645 of the Public Health Service Act (42 U.S.C. 2910) and any similar facility offering diagnosis or treatment of mental or physical injury or disease, including the administrative and support facilities essential to the operation of such medical facilities even if not contiguous.
- (5) Custodial care facility means those buildings, structures, or systems including those for essential administration and support, which are used to provide institutional care for persons who require close supervision and some physical constraints on their daily activities for their self-protection, but do not require day-to-day medical care.
- (6) Other essential governmental service facility means museums, zoos, community centers, libraries, homeless shelters, senior citizen centers, rehabilitation facilities, shelter workshops and facilities which provide health and

safety services of a governmental nature. All such facilities must be open to the general public.

- (f) Private nonprofit organization means any non-governmental agency or entity that currently has:
 - (1) An effective ruling letter from the U.S. Internal Revenue Service, granting tax exemption under sections 501(c), (d), or (e) of the Internal Revenue Code of 1954, or
 - (2) Satisfactory evidence from the State that the non-revenue producing organization or entity is a nonprofit one organized or doing business under State law.
- (g) Public entity means an organization formed for a public purpose whose direction and funding are provided by one or more political subdivisions of the State.
- (h) Public facility means the following facilities owned by a State or local government: any flood control, navigation, irrigation, reclamation, public power, sewage treatment and collection, water supply and distribution, watershed development, or airport facility; any non-Federal aid, street, road, or highway; and any other public building, structure, or system, including those used for educational, recreational, or cultural purposes; or any park.
- (i) Standards means codes, specifications or standards required for the construction of facilities.

[55 FR 2307, Jan. 23, 1990, as amended at 58 FR 47994, Sept. 14, 1993]

§ 206.222 Applicant Eligibility.

The following entities are eligible to apply for assistance under the State public assistance grant:

- (a) State and local governments.
- (b) Private non-profit organizations or institutions which own or operate a private nonprofit facility as defined in Sec. 205.221(e).
- (c) Indian tribes or authorized tribal organizations and Alaska Native villages or organizations, but not Alaska Native Corporations, the ownership of which is vested in private individuals.

§ 206.223 General Work Eligibility.

- (a) General. To be eligible for financial assistance, an item of work must:
 - (1) Be required as the result of the major disaster event,
 - (2) Be located within a designated disaster area, and
 - (3) Be the legal responsibility of an eligible applicant.
- (b) Private nonprofit facilities. To be eligible, all private nonprofit facilities must be owned and operated by an organization meeting the definition of a private nonprofit organization [see Sec. 206.221(f)].
- (c) Public entities. Facilities belonging to a public entity may be eligible for assistance when the application is submitted through the State or a political subdivision of the State.
- (d) Facilities serving a rural community or unincorporated town or village. To be eligible for assistance, a facility not owned by an eligible applicant, as defined in Sec. 206.222, must be owned by a private nonprofit organization; and provide an essential governmental service to the general public. Applications for these facilities must be submitted through a State or political subdivision of the State.
- (e) Negligence. No assistance will be provided to an applicant for damages caused by its own negligence. If negligence by another party results in damages, assistance may be provided, but will be conditioned on agreement by the applicant to cooperate with FEMA in all efforts necessary to recover the cost of such assistance from the negligent party.

§ 206.224 Debris Removal.

- (a) Public interest. Upon determination that debris removal is in the public interest, the Regional Director may provide assistance for the removal of debris and wreckage from publicly and privately owned lands and waters. Such removal is in the public interest when it is necessary to:
 - (1) Eliminate immediate threats to life, public health, and safety;or

- (2) Eliminate immediate threats of significant damage to improved public or private property; or
 - (3) Ensure economic recovery of the affected community to the benefit of the community-at-large.
- (b) Debris removal from private property. When it is in the public interest for an eligible applicant to remove debris from private property in urban, suburban and rural areas, including large lots, clearance of the living, recreational and working area is eligible except those areas used for crops and livestock or unused areas.
- (c) Assistance to individuals and private organizations. No assistance will be provided directly to an individual or private organization, or to an eligible applicant for reimbursement of an individual or private organization, for the cost of removing debris from their own property. Exceptions to this are those private nonprofit organizations operating eligible facilities.

§ 206.225 Emergency Work.

- (a) General.
- (1) Emergency protective measures to save lives, to protect public health and safety, and to protect improved property are eligible.
 - (2) In determining whether emergency work is required, the Regional Director may require certification by local State, and/or Federal officials that a threat exists, including identification and evaluation of the threat and recommendations of the emergency work necessary to cope with the threat.
 - (3) In order to be eligible, emergency protective measures must:
 - (i) Eliminate or lessen immediate threat to lives, public health or safety; or
 - (ii) Eliminate or lessen immediate threats of significant additional damage to improved public or private property through measures which are cost effective.

- (b) Emergency access. An access facility that is not publicly owned or is not the direct responsibility of an eligible applicant for repair or maintenance may be eligible for emergency repairs or replacement provided that emergency repair or replacement of the facility economically eliminates the need for temporary housing. The work will be limited to that necessary for the access to remain passable through events which can be considered an immediate threat. The work must be performed by an eligible applicant and will be subject to cost sharing requirements.
- (c) Emergency communications. Emergency communications necessary for the purpose of carrying out disaster relief functions may be established and may be made available to State and local government officials as deemed appropriate. Such communications are intended to supplement but not replace normal communications that remain operable after a major disaster. FEMA funding for such communications will be discontinued as soon as the needs have been met.
- (d) Emergency public transportation. Emergency public transportation to meet emergency needs and to provide transportation to public places and such other places as necessary for the community to resume its normal pattern of life as soon as possible is eligible. Such transportation is intended to supplement but not replace predisaster transportation facilities that remain operable after a major disaster. FEMA funding for such transportation will be discontinued as soon as the needs have been met.

§ 206.226 Restoration of Damaged Facilities.

Work to restore eligible facilities on the basis of the design of such facilities as they existed immediately prior to the disaster and in conformity with the following is eligible:

- (a) Assistance under other Federal agency (OFA) programs.
 - (1) Generally, disaster assistance will not be made available under the Stafford Act when another Federal agency has specific authority to restore facilities damaged or destroyed by an event which is declared a major disaster.

- (2) An exception to the policy described in paragraph (a)(1) of this section exists for public elementary and secondary school facilities which are otherwise eligible for assistance from the Department of Education (ED) under 20 U.S.C. 241-1 and 20 U.S.C. 646. Such facilities are also eligible for assistance from FEMA under the Stafford Act, and grantees shall accept applications from local educational agencies for assistance under the Stafford Act.
 - (3) The exception does not cover payment of increased current operating expenses or replacement of lost revenues as provided in 20 U.S.C. 241-1(a) and implemented by 34 CFR 219.14. Such assistance shall continue to be granted and administered by the Department of Education.
- (b) Standards. For the costs of Federal, State, and local repair or replacement standards which change the predisaster construction of facility to be eligible, the standards must:
- (1) Apply to the type of repair or restoration required;
(Standards may be different for new construction and repair work)
 - (2) Be appropriate to the predisaster use of the facility;
 - (3) (i) Be found reasonable, in writing, and formally adopted and implemented by the State or local government on or before the disaster declaration date or be a legal Federal requirement applicable to the type of restoration.
(ii) This paragraph (b) applies to local governments on January 1, 1999 and to States on January 1, 2000. Until the respective applicability dates, the standards must be in writing and formally adopted by the applicant prior to project approval or be a legal Federal or State requirement applicable to the type of restoration.
 - (4) Apply uniformly to all similar types of facilities within the jurisdiction of owner of the facility; and
 - (5) For any standard in effect at the time of a disaster, it must have been enforced during the time it was in effect.
- (c) Hazard mitigation. In approving grant assistance for restoration of facilities, the Regional Director may require cost effective hazard mitigation measures not required by applicable

standards. The cost of any requirements for hazard mitigation placed on restoration projects by FEMA will be an eligible cost for FEMA assistance.

(d) Repair vs. replacement.

- (1) A facility is considered repairable when disaster damages do not exceed 50 percent of the cost of replacing a facility to its predisaster condition, and it is feasible to repair the facility so that it can perform the function for which it was being used as well as it did immediately prior to the disaster.
- (2) If a damaged facility is not repairable in accordance with paragraph (d)(1) of this section, approved restorative work may include replacement of the facility. The applicant may elect to perform repairs to the facility, in lieu of replacement, if such work is in conformity with applicable standards. However, eligible costs shall be limited to the less expensive of repairs or replacement.
- (3) An exception to the limitation in paragraph (d)(2) of this section may be allowed for facilities eligible for or on the National Register of Historic Properties. If an applicable standard requires repair in a certain manner, costs associated with that standard will be eligible.

(e) Relocation.

- (1) The Regional Director may approve funding for and require restoration of a destroyed facility at a new location when:
 - (i) The facility is and will be subject to repetitive heavy damage;
 - (ii) The approval is not barred by other provisions of title 44 CFR; and
 - (iii) The overall project, including all costs, is cost effective.
- (2) When relocation is required by the Regional Director, eligible work includes land acquisition and ancillary facilities such as roads and utilities, in addition to work normally eligible as part of a facility reconstruction. Demolition and removal of the old facility is also an eligible cost.
- (3) When relocation is required by the Regional Director, no future funding for repair or replacement of a facility at the

original site will be approved, except those facilities which facilitate an open space use in accordance with 44 CFR part 9.

- (4) When relocation is required by the Regional Director, and, instead of relocation, the applicant requests approval of an alternate project [see Sec. 206.203(d)(2)], eligible costs will be limited to 90 percent of the estimate of restoration at the original location excluding hazard mitigation measures.
 - (5) If relocation of a facility is not feasible or cost effective, the Regional Director shall disapprove Federal funding for the original location when he/she determines in accordance with 44 CFR part 9, 44 CFR part 10, or 44 CFR part 206, subpart M, that restoration in the original location is not allowed. In such cases, an alternate project may be applied for.
- (f) Equipment and furnishings. If equipment and furnishings are damaged beyond repair, comparable items are eligible as replacement items.
- (g) Library books and publications. Replacement of library books and publications is based on an inventory of the quantities of various categories of books or publications damaged or destroyed. Cataloging and other work incidental to replacement are eligible.
- (h) Beaches.
- (1) Replacement of sand on an unimproved natural beach is not eligible.
 - (2) Improved beaches. Work on an improved beach may be eligible under the following conditions:
 - (i) The beach was constructed by the placement of sand (of proper grain size) to a designed elevation, width, and slope; and
 - (ii) A maintenance program involving periodic renourishment of sand must have been established and adhered to by the applicant.
- (i) Restrictions
- (1) Alternative use facilities. If a facility was being used for purposes other than those for which it was designed,

restoration will only be eligible to the extent necessary to restore the immediate predisaster alternate purpose.

- (2) Inactive facilities. Facilities that were not in active use at the time of the disaster are not eligible except in those instances where the facilities were only temporarily inoperative for repairs or remodeling, or where active use by the applicant was firmly established in an approved budget or the owner can demonstrate to FEMA's satisfaction an intent to begin use within a reasonable time.

[55 FR 2307, Jan. 23, 1990, as amended at 58 FR 55022, Oct. 25, 1993; 63 FR 5897, Feb. 5, 1998]

§ 206.227 Snow Assistance.

Emergency or major disaster declarations based on snow or blizzard conditions will be made only for cases of record or near record snowstorms, as established by official government records. Federal assistance will be provided for all costs eligible under 44 CFR 206.225 for a specified period of time which will be determined by the circumstances of the event.

[62 FR 45330, Aug. 27, 1997]

§ 206.228 Allowable Costs.

General policies for determining allowable costs are established in 44 CFR 13.22. Exceptions to those policies as allowed in 44 CFR 13.4 and 13.6 are explained below.

(a) Eligible direct costs

- (1) Applicant-owned equipment. Reimbursement for ownership and operation costs of applicant-owned equipment used to perform eligible work shall be provided in accordance with the following guidelines:
 - (i) Rates established under State guidelines. In those cases where an applicant uses reasonable rates which have been established or approved under State guidelines, in its normal daily operations, reimbursement

for applicant-owned equipment which has an hourly rate of \$75 or less shall be based on such rates.

Reimbursement for equipment which has an hourly rate in excess of \$75 shall be determined on a case by case basis by FEMA.

- (ii) Rates established under local guidelines. Where local guidelines are used to establish equipment rates, reimbursement will be based on those rates or rates in a Schedule of Equipment Rates published by FEMA, whichever is lower. If an applicant certifies that its locally established rates do not reflect actual costs, reimbursement may be based on the FEMA Schedule of Equipment Rates, but the applicant will be expected to provide documentation if requested. If an applicant wishes to claim an equipment rate which exceeds the FEMA Schedule, it must document the basis for that rate and obtain FEMA approval of an alternate rate.
 - (iii) No established rates. The FEMA Schedule of Equipment Rates will be the basis for reimbursement in all cases where an applicant does not have established equipment rates.
- (2) Statutory Administrative Costs.
- (i) Grantee. Pursuant to section 406(f)(2) of the Stafford Act, an allowance will be provided to the State to cover the extraordinary costs incurred by the State for preparation of damage survey reports, final inspection reports, project applications, final audits, and related field inspections by State employees including overtime pay and per diem and travel expenses, but not including regular time for such employees. The allowance will be based on the following percentages of the total amount of assistance provided (Federal share) for all subgrantees in the State under sections 403, 406, 407, 502, and 503 of the Act:
 - (A) For the first \$100,000 of total assistance provided (Federal share), three percent of such assistance.
 - (B) For the next \$900,000, two percent of such assistance.

- (C) For the next \$4,000,000, one percent of such assistance.
 - (D) For assistance over \$5,000,000, one-half percent of such assistance.
 - (ii) Subgrantee. Pursuant to section 406(f)(1) of the Stafford Act, necessary costs of requesting, obtaining, and administering Federal disaster assistance subgrants will be covered by an allowance which is based on the following percentages of net eligible costs under sections 403, 406, 407, 502, and 503 of the Act, for an individual applicant (applicants in this context include State agencies):
 - (A) For the first \$100,000 of net eligible costs, three percent of such costs.
 - (B) For the next \$900,000, two percent of such costs.
 - (C) For the next \$4,000,000, one percent of such costs.
 - (D) For assistance over \$5,000,000, one-half percent of such costs.
 - (3) State Management Administrative Costs.
 - (i) Grantee. Except for the items listed in paragraph (a)(2)(i) of this section, other administrative costs shall be paid in accordance with 44 CFR 13.22.
 - (ii) Subgrantee. No other administrative costs of a subgrantee are eligible because the percentage allowance in paragraph (a)(2)(ii) of this section covers necessary costs of requesting, obtaining, and administering Federal assistance.
 - (4) Force Account Labor Costs. The straight- or regular-time salaries and benefits of a subgrantee's permanently employed personnel are not eligible in calculating the cost of eligible work under sections 403 and 407 of the Stafford Act, 42 U.S.C. 5170b and 5173. For the performance of eligible permanent restoration under section 406 of the Act 42 U.S.C. 5172, straight-time salaries and benefits of a subgrantee's permanently employed personnel are eligible.
- (b) Eligible indirect costs.

- (1) Grantee. Indirect costs of administering the disaster program are eligible in accordance with the provisions of 44 CFR part 13 and OMB Circular A-87.
- (2) Subgrantee. No indirect costs of a subgrantee are separately eligible because the percentage allowance in paragraph (a)(2)(ii) of this section covers necessary costs of requesting, obtaining and administering Federal assistance.

[55 FR 2307, Jan 23, 1990, as amended at 58 FR 47996, Sept. 14, 1993]

§§ 206.229-206.249 [Reserved]

Subpart I-Public Assistance Insurance Requirements

Source: 56 FR 64560, Dec. 11, 1991, unless otherwise noted.

§ 206.250 General.

- (a) Sections 311 and 406(d) of the Stafford Act, and the Flood Disaster Protection Act of 1973, Public Law 93-234, set forth certain insurance requirements which apply to disaster assistance provided by FEMA. The requirements of this subpart apply to all assistance provided pursuant to section 406 of the Stafford Act with respect to any major disaster declared by the President after November 23, 1988.
- (b) Insurance requirements prescribed in this subpart shall apply equally to private nonprofit (PNP) facilities which receive assistance under section 406 of the Act. PNP organizations shall submit the necessary documentation and assurances required by this subpart to the Grantee.
- (c) Actual and anticipated insurance recoveries shall be deducted from otherwise eligible costs, in accordance with this subpart.
- (d) The full coverage available under the standard flood insurance policy from the National Flood Insurance Program (NFIP) will be

subtracted from otherwise eligible costs for a building and its contents within the special flood hazard area in accordance with Sec. 206.252.

- (e) The insurance requirements of this subpart should not be interpreted as a substitute for various hazard mitigation techniques which may be available to reduce the incidence and severity of future damage.

§ 206.251 Definitions.

- (a) Assistance means any form of a Federal grant under section 406 of the Stafford Act to replace, restore, repair, reconstruct, or construct any facility and/or its contents as a result of a major disaster.
- (b) Building means a walled and roofed structure, other than a gas, or liquid storage tank, that is principally above ground and affixed to a permanent site, as well as a manufactured home on a permanent foundation.
- (c) Community means any State or political subdivision thereof, or any Indian tribe or authorized tribal organization, or Alaskan Native Village or authorized native organization which has authority to adopt and enforce floodplain management regulations for the areas within its jurisdiction.
- (d) National Flood Insurance Program (NFIP) means the program authorized by the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001 et seq.
- (e) Special flood hazard area means an area having special flood, mudslide, and/or flood-related erosion hazards, and shown on a Flood Hazard Boundary map (FHBM) or the Flood Insurance Rate Map (FIRM) issued by FEMA as Zone A, AO, A1-30, AE, A99, AH, VO, V1-30 VE, V, M, or E. "Special flood hazard area" is synonymous with "special hazard area", as defined in 44 CFR part 59.
- (f) Standard Flood Insurance Policy means the flood insurance policy issued by the Federal Insurance Administrator, or by a Write-Your-Own Company pursuant to 44 CFR 62.23.

§ 206.252 Insurance Requirements for Facilities Damaged by Flood.

- (a) Where an insurable building damaged by flooding is located in a special flood hazard area identified for more than one year by the Director, assistance pursuant to section 406 of the Stafford Act shall be reduced. The amount of the reduction shall be the maximum amount of the insurance proceeds which would have been received had the building and its contents been fully covered by a standard flood insurance policy.
- (b) The reduction stated above shall not apply to a PNP facility which could not be insured because it was located in a community not participating in the NFIP. However, the provisions of the Flood Disaster Protection Act of 1973 prohibit approval of assistance for the PNP unless the community agrees to participate in the NFIP within six months after the major disaster declaration date, and the required flood insurance is purchased.
- (c) Prior to approval of a Federal grant for the restoration of a facility and its contents which were damaged by a flood, the Grantee shall notify the Regional Director of any entitlement to an insurance settlement or recovery. The Regional Director shall reduce the eligible costs by the amount of insurance proceeds which the grantee receives.
- (d) The grantee or subgrantee is required to obtain and maintain flood insurance in the amount of eligible disaster assistance, as a condition of receiving Federal assistance that may be available. This requirement also applies to insurable flood damaged facilities located outside a special flood hazard area when it is reasonably available, adequate, and necessary. However, the Regional Director shall not require greater types and amounts of insurance than are certified as reasonable by the State Insurance Commissioner. The requirement to purchase flood insurance is waived when eligible costs for an insurable facility do not exceed \$5,000.

§ 206.253 Insurance Requirements for Facilities Damaged by Disasters Other than Floods.

- (a) Prior to approval of a Federal grant for the restoration of a facility and its contents which were damaged by a disaster other than flood, the Grantee shall notify the Regional Director of any entitlement to insurance settlement or recovery for such facility and its contents. The Regional Director shall reduce the eligible costs by the actual amount of insurance proceeds relating to the eligible costs.
- (b) (1) Assistance under section 406 of the Stafford Act will be approved only on the condition that the grantee obtain and maintain such types and amounts of insurance as are reasonable and necessary to protect against future loss to such property from the types of hazard which caused the major disaster. The extent of insurance to be required will be based on the eligible damage that was incurred to the damaged facility as a result of the major disaster. The Regional Director shall not require greater types and extent of insurance than are certified as reasonable by the State Insurance Commissioner.
(2) Due to the high cost of insurance, some applicants may request to insure the damaged facilities under a blanket insurance policy covering all their facilities, an insurance pool arrangement, or some combination of these options. Such an arrangement may be accepted for other than flood damages. However, if the same facility is damaged in a similar future disaster, eligible costs will be reduced by the amount of eligible damage sustained on the previous disaster.
- (c) The Regional Director shall notify the Grantee of the type and amount of insurance required. The grantee may request that the State Insurance Commissioner review the type and extent of insurance required to protect against future loss to a disaster-damaged facility, the Regional Director shall not require greater types and extent of insurance than are certified as reasonable by the State Insurance Commissioner.

- (d) The requirements of section 311 of the Stafford Act are waived when eligible costs for an insurable facility do not exceed \$5,000. The Regional Director may establish a higher waiver amount based on hazard mitigation initiatives which reduce the risk of future damages by a disaster similar to the one which resulted in the major disaster declaration which is the basis for the application for disaster assistance.
- (e) The Grantee shall provide assurances that the required insurance coverage will be maintained for the anticipated life of the restorative work or the insured facility, whichever is lesser.
- (f) No assistance shall be provided under section 406 of the Stafford Act for any facility for which assistance was provided as a result of a previous major disaster unless all insurance required by FEMA as a condition of the previous assistance has been obtained and maintained.

§§ 206.254-206.339 [Reserved]

Subpart J-Coastal Barrier Resources Act

Source: 55 FR 2311, Jan. 23, 1990, unless otherwise noted.

§ 206.340 Purpose of Subpart.

This subpart implements the Coastal Barrier Resources Act (CBRA) (Pub. L. 97-348) as that statute applies to disaster relief granted to individuals and State and local governments under the Stafford Act. CBRA prohibits new expenditures and new financial assistance within the Coastal Barrier Resources System (CBRS) for all but a few types of activities identified in CBRA. This subpart specifies what actions may and may not be carried out within the CBRS. It establishes procedures for compliance with CBRA in the administration of disaster assistance by FEMA.

§ 206.341 Policy.

It shall be the policy of FEMA to achieve the goals of CBRA in carrying out disaster relief on units of the Coastal Barrier Resources System. It is FEMA's intent that such actions be consistent with the purpose of CBRA to minimize the loss of human life, the wasteful expenditure of Federal revenues, and the damage to fish, wildlife and other natural resources associated with coastal barriers along the Atlantic and Gulf coasts and to consider the means and measures by which the long-term conservation of these fish, wildlife, and other natural resources may be achieved under the Stafford Act.

§ 206.342 Definitions.

Except as otherwise provided in this subpart, the definitions set forth in part 206 of subchapter D are applicable to this subject.

- (a) Consultation means that process by which FEMA informs the Secretary of the Interior through his/her designated agent of FEMA proposed disaster assistance actions on a designated unit of the Coastal Barrier Resources System and by which the Secretary makes comments to FEMA about the appropriateness of that action. Approval by the Secretary is not required in order that an action be carried out.
- (b) Essential link means that portion of a road, utility, or other facility originating outside of the system unit but providing access or service through the unit and for which no alternative route is reasonably available.
- (c) Existing facility on a unit of CBRS established by Public Law 97-348 means a publicly owned or operated facility on which the start of a construction took place prior to October 18, 1982, and for which this fact can be adequately documented. In addition, a legally valid building permit or equivalent documentation, if required, must have been obtained for the construction prior to October 18, 1982. If a facility has been substantially improved or expanded since October 18, 1982, it is not an existing facility. For any other unit added to the CBRS by

amendment to Public Law 97-348, the enactment date of such amendment is substituted for October 18, 1982, in this definition.

- (d) Expansion means changing a facility to increase its capacity or size.
- (e) Facility means "public facility" as defined in Sec. 206.201. This includes any publicly owned flood control, navigation, irrigation, reclamation, public power, sewage treatment and collection, water supply and distribution, watershed development, or airport facility; and nonfederal-aid street, road, or highway; and any other public building, structure, or system, including those used for educational, recreational, or cultural purposes, or any park.
- (f) Financial assistance means any form of Federal loan, grant guaranty, insurance, payment rebate, subsidy or any other form of direct or indirect Federal assistance.
- (g) New financial assistance on a unit of the CBRS established by Public Law 97-348 means an approval by FEMA of a project application or other disaster assistance after October 18, 1982. For any other unit added to the CBRS by amendment to Public Law 97-348, the enactment date such amendment is substituted for October 18, 1982, in this definition.
- (h) Start of construction for a structure means the first placement of permanent construction, such as the placement of footings or slabs or any work beyond the stage of excavation. Permanent construction for a structure does not include land preparation such as clearing, grading, and placement of fill, nor does it include excavation for a basement, footings, or piers. For a facility which is not a structure, start of construction means the first activity for permanent construction of a substantial part of the facility. Permanent construction for a facility does not include land preparation such as clearing and grubbing but would include excavation and placement of fill such as for a road.
- (i) Structure means a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a mobile home.

- (j) Substantial improvement means any repair, reconstruction or other improvement of a structure or facility, that has been damaged in excess of, or the cost of which equals or exceeds, 50 percent of the market value of the structure or placement cost of the facility (including all "public facilities") as defined in the Stafford Act) either:
- (1) Before the repair or improvement is started; or
 - (2) If the structure or facility has been damaged and is proposed to be restored, before the damage occurred. If a facility is a link in a larger system, the percentage of damage will be based on the relative cost of repairing the damaged facility to the replacement cost of that portion of the system which is operationally dependent on the facility. The term substantial improvement does not include any alternation of a structure or facility listed on the National Register of Historic Places or a State Inventory of Historic Places.
- (k) System unit means any undeveloped coastal barrier, or combination of closely related undeveloped coastal barriers included within the Coastal Barrier Resources System as established by the section 4 of the CBRA, or as modified by the Secretary in accordance with that statute.

§ 206.343 Scope.

- (a) The limitations on disaster assistance as set forth in this subpart apply only to FEMA actions taken on a unit of the Coastal Barrier Resources System or any conduit to such unit, including, but not limited to a bridge, causeway, utility, or similar facility.
- (b) FEMA assistance having a social program orientation which is unrelated to development is not subject to the requirements of these regulations. This assistance includes:
- (1) Individual and Family Grants that are not for acquisition or construction purposes;
 - (2) Crisis counseling;
 - (3) Disaster Legal services; and
 - (4) Disaster unemployment assistance.

§ 206.344 Limitations on Federal Expenditures.

Except as provided in Secs. 206.345 and 206.346, no new expenditures or financial assistance may be made available under authority of the Stafford Act for any purpose within the Coastal Barrier Resources System, including but not limited to:

- (a) Construction, reconstruction, replacement, repair or purchase of any structure, appurtenance, facility or related infrastructure;
- (b) Construction, reconstruction, replacement, repair or purchase of any road, airport, boat landing facility, or other facility on, or bridge or causeway to, any System unit; and
- (c) Carrying out of any project to prevent the erosion of, or to otherwise stabilize, any inlet, shoreline, or inshore area, except that such assistance and expenditures may be made available on units designated pursuant to Section 4 on maps numbered S01 through S08 for purposes other than encouraging development and, in all units, in cases where an emergency threatens life, land, and property immediately adjacent to that unit.

§ 206.345 Exceptions.

The following types of disaster assistance actions are exceptions to the prohibitions of Sec. 206.344.

- (a) After consultation with the Secretary of the Interior, the FEMA Regional Director may make disaster assistance available within the CBRS for:
 - (1) Replacement, reconstruction, or repair, but not the expansion, of publicly owned or publicly operated roads, structures, or facilities that are essential links in a larger network or system;
 - (2) Repair of any facility necessary for the exploration, extraction, or transportation of energy resources which activity can be carried out only on, in, or adjacent to coastal water areas because the use or facility requires access to the coastal water body; and

- (3) Restoration of existing channel improvements and related structures, such as jetties, and including the disposal of dredge materials related to such improvements.
- (b) After consultation with the Secretary of the Interior, the FEMA Regional Director may make disaster assistance available within the CBRS for the following types of actions, provided such assistance is consistent with the purposes of CBRA;
 - (1) Emergency actions essential to the saving of lives and the protection of property and the public health and safety, if such actions are performed pursuant to sections 402, 403, and 502 of the Stafford Act and are limited to actions that are necessary to alleviate the impacts of the event;
 - (2) Replacement, reconstruction, or repair, but not the expansion, of publicly owned or publicly operated roads, structures, or facilities, except as provided in Sec. 206.347(c)(5);
 - (3) Repair of air and water navigation aids and devices, and of the access thereto;
 - (4) Repair of facilities for scientific research, including but not limited to aeronautical, atmospheric, space, geologic, marine, fish and wildlife and other research, development, and applications;
 - (5) Repair of facilities for the study, management, protection and enhancement of fish and wildlife resources and habitats, including but not limited to, acquisition of fish and wildlife habitats and related lands, stabilization projects for fish and wildlife habitats, and recreational projects; and
 - (6) Repair of nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore natural stabilization systems.

§ 206.346 Applicability to Disaster Assistance.

- (a) Emergency assistance. The Regional Director may approve assistance pursuant to sections 402, 403, or 502 of the Stafford Act, for emergency actions which are essential to the saving of lives and the protection of property and the public

health and safety, are necessary to alleviate the emergency, and are in the public interest. Such actions include but are not limited to:

- (1) Removal of debris from public property;
 - (2) Emergency protection measures to prevent loss of life, prevent damage to improved property and protect public health and safety;
 - (3) Emergency restoration of essential community services such as electricity, water or sewer;
 - (4) Provision of access to a private residence;
 - (5) Provision of emergency shelter by means of providing emergency repair of utilities, provision of heat in the season requiring heat, or provision of minimal cooking facilities;
 - (6) Relocation of individuals or property out of danger, such as moving a mobile home to an area outside of the CBRS (but disaster assistance funds may not be used to relocate facilities back into the CBRS);
 - (7) Home repairs to private owner-occupied primary residences to make them habitable;
 - (8) Housing eligible families in existing resources in the CBRS; and
 - (9) Mortgage and rental payment assistance.
- (b) Permanent restoration assistance. Subject to the limitations set out below, the Regional Director may approve assistance for the repair, reconstruction, or replacement but not the expansion of the following publicly owned or operated facilities and certain private nonprofit facilities.
- (1) Roads and bridges;
 - (2) Drainage structures, dams, levees;
 - (3) Buildings and equipment;
 - (4) Utilities (gas, electricity, water, etc.); and
 - (5) Park and recreational facilities.

§ 206.347 Requirements.

- (a) Location determination. For each disaster assistance action which is proposed on the Atlantic or Gulf Coasts, the Regional Director shall:
- (1) Review a proposed action's location to determine if the action is on or connected to the CBRS unit and thereby subject to these regulations. The appropriate Department of Interior map identifying units of the CBRS will be the basis of such determination. The CBRS units are also identified on FEMA Flood Insurance Maps (FIRMs) for the convenience of field personnel.
 - (2) If an action is determined not to be on or connected to a unit of the CBRS, no further requirements of these regulations needs to be met, and the action may be processed under other applicable disaster assistance regulations.
 - (3) If an action is determined to be on or connected to a unit of the CBRS, it is subject to the consultation and consistency requirements of CBRA as prescribed in Secs. 206.348 and 206.349.
- (b) Emergency disaster assistance. For each emergency disaster assistance action listed in Sec. 206.346(a), the Regional Director shall perform the required consultation. CBRA requires that FEMA consult with the Secretary of the Interior before taking any action on a System unit. The purpose of such consultation is to solicit advice on whether the action is or is not one which is permitted by section 6 of CBRA and whether the action is or is not consistent with the purposes of CBRA as defined in section 1 of that statute.
- (1) FEMA has conducted advance consultation with the Department of the Interior concerning such emergency actions. The result of the consultation is that the Secretary of the Interior through the Assistance Secretary for Fish and Wildlife and Parks has concurred that the emergency work listed in Sec. 206.346(a) is consistent with the purposes of CBRA and may be approved by FEMA without additional consultation.

- (2) Notification. As soon as practicable, the Regional Director will notify the designated Department of the Interior representative at the regional level of emergency projects that have been approved. Upon request from the Secretary of the Interior, the Associate Director, SLPS, or his or her designee will supply reports of all current emergency actions approved on CBRS units. Notification will contain the following information:
 - (i) Identification of the unit in the CBRS;
 - (ii) Description of work approved;
 - (iii) Amount of Federal funding; and
 - (iv) Additional measures required.
- (c) Permanent restoration assistance. For each permanent restoration assistance action including but not limited to those listed in Sec. 206.346(b), the Regional Director shall meet the requirements set out below.
 - (1) Essential links. For the repair or replacement of publicly owned or operated roads, structures or facilities which are essential links in a larger network or system:
 - (i) No facility may be expanded beyond its predisaster design.
 - (ii) Consultation in accordance with Sec. 206.348 shall be accomplished.
 - (2) Channel improvements. For the repair of existing channels, related structures and the disposal of dredged materials:
 - (i) No channel or related structure may be repaired, reconstructed, or replaced unless funds were appropriated for the construction of such channel or structure before October 18, 1982;
 - (ii) Expansion of the facility beyond its predisaster design is not permitted;
 - (iii) Consultation in accordance with Sec. 206.348 shall be accomplished.
 - (3) Energy facilities. For the repair of facilities necessary for the exploration, extraction or transportation of energy resources:

- (i) No such facility may be repaired, reconstructed or replaced unless such function can be carried out only in, on, or adjacent to a coastal water area because the use or facility requires access to the coastal water body;
 - (ii) Consultation in accordance with Sec. 206.348 shall be accomplished.
- (4) Special-purpose facilities. For the repair of facilities used for the study, management, protection or enhancement of fish and wildlife resources and habitats and related recreational projects; air and water navigation aids and devices and access thereto; and facilities used for scientific research, including but not limited to aeronautical, atmospheric, space, geologic, marine, fish and wildlife and other research, development, and applications; and, nonstructural facilities that are designed to mimic, enhance or restore natural shoreline stabilization systems:
 - (i) Consultation in accordance with Sec. 206.348 shall be accomplished;
 - (ii) No such facility may be repaired, reconstructed, or replaced unless it is otherwise consistent with the purposes of CBRA in accordance with Sec. 206.349.
- (5) Other public facilities. For the repair, reconstruction, or replacement of publicly owned or operated roads, structures, or facilities that do not fall within the categories identified in paragraphs (c)(1), (2), (3), and (4) of this section:
 - (i) No such facility may be repaired, reconstructed, or replaced unless it is an "existing facility;"
 - (ii) Expansion of the facility beyond its predisaster design is not permitted;
 - (iii) Consultation in accordance with Sec. 206.348 shall be accomplished;
 - (iv) No such facility may be repaired, reconstructed, or replaced unless it is otherwise consistent with the purposes of CBRA in accordance with Sec. 206.349.
- (6) Private nonprofit facilities. For eligible private nonprofit

facilities as defined in these regulations and of the type described in paragraphs (c)(1), (2), (3), and (4) of this section:

- (i) Consultation in accordance with Sec. 206.348 shall be accomplished.
 - (ii) No such facility may be repaired, reconstructed, or replaced unless it is otherwise consistent with the purposes of CBRA in accordance with Sec. 206.349.
- (7) Improved project. An improved project may not be approved for a facility in the CBRS if such grant is to be combined with other funding, resulting in an expansion of the facility beyond the predisaster design. If a facility is exempt from the expansion prohibitions of CBRA by virtue of falling into one of the categories identified in paragraph (c)(1), (2), (3), or (4) of this section, then an improved project for such facilities is not precluded.
- (8) Alternate project. A new or enlarged facility may not be constructed on a unit of the CBRS under the provisions of the Stafford Act unless the facility is exempt from the expansion prohibition of CBRA by virtue of falling into one of the categories identified in paragraph (c)(1), (2), (3), or (4) of this section.

§ 206.348 Consultation.

As required by section 6 of the CBRA, the FEMA Regional Director will consult with the designated representative of the Department of the Interior (DOI) at the regional level before approving any action involving permanent restoration of a facility or structure on or attached to a unit of the CBRS.

- (a) The consultation shall be by written memorandum to the DOI representative and shall contain the following:
 - (1) Identification of the unit within the CBRS;
 - (2) Description of the facility and the proposed repair or replacement work; including identification of the facility as an exception under section 6 of CBRA; and full justification of its status as an exception;

- (3) Amount of proposed Federal funding;
 - (4) Additional mitigation measures required; and
 - (5) A determination of the action's consistency with the purposes of CBRA, if required by these regulations, in accordance with Sec. 206.349.
- (b) Pursuant to FEMA understanding with DOI, the DOI representative will provide technical information and an opinion whether or not the proposed action meets the criteria for a CBRA exception, and on the consistency of the action with the purposes of CBRA (when such consistency is required). DOI is expected to respond within 12 working days from the date of the FEMA request for consultation. If a response is not received within the time limit, the FEMA Regional Director shall contact the DOI representative to determine if the request for consultation was received in a timely manner. If it was not, an appropriate extension for response will be given. Otherwise, he or she may assume DOI concurrence and proceed with approval of the proposed action.
- (c) For those cases in which the regional DOI representative believes that the proposed action should not be taken and the matter cannot be resolved at the regional level, the FEMA Regional Director will submit the issue to the FEMA Assistant Associate Director for Disaster Assistance Programs (DAP). In coordination with the Office of General Counsel (OGC), consultation will be accomplished at the FEMA National Office with the DOI consultation officer. After this consultation, the Assistant Associate Director, DAP, determines whether or not to approve the proposed action.

§ 206.349 Consistency Determinations.

Section 6(a)(6) of CBRA requires that certain actions be consistent with the purposes of that statute if the actions are to be carried out on a unit of the CBRA. The purpose of CBRA, as stated in section 2(b) of that statute, is to minimize the loss of human life, wasteful expenditure of Federal revenues, and the damage to fish, wildlife, and other natural resources associated with the coastal

barriers along with Atlantic and Gulf coasts. For those actions required, the FEMA Regional Director shall evaluate the action according to the following procedures, and the evaluation shall be included in the written request for consultation with DOI.

- (a) Impact identification. FEMA shall identify impacts of the following types that would result from the proposed action:
- (1) Risks to human life;
 - (2) Risks of damage to the facility being repaired or replaced;
 - (3) Risks of damage to other facilities;
 - (4) Risks of damage to fish, wildlife, and other natural resources;
 - (5) Condition of existing development served by the facility and the degree to which its redevelopment would be encouraged; and
 - (6) Encouragement of new development.
- (b) Mitigation. FEMA shall modify actions by means of practicable mitigation measures that can be incorporated into the proposed action and will conserve natural and wildlife resources.
- (c) Conservation. FEMA shall identify practicable measures that can be incorporated into the proposed action and will conserve natural and wildlife resources.
- (d) Finding. For those actions required to be consistent with the purposes of CBRA, the above evaluation must result in a finding of consistency with CBRA by the Regional Director before funding may be approved for that action.

§§ 206.350-206.359 [Reserved]

Subpart K-Community Disaster Loans

Source: 55 FR 2314, Jan. 23, 1990, unless otherwise noted.

§ 206.360 Purpose.

This subpart provides policies and procedures for local governments and State and Federal officials concerning the Community Disaster Loan program under section 417 of the Act.

§ 206.361 Loan Program.

- (a) General. The Associate Director, State and Local Programs and Support (the Associate Director) may make a Community Disaster Loan to any local government which has suffered a substantial loss of tax and other revenues as a result of a major disaster and which demonstrates a need for Federal financial assistance in order to perform its governmental functions.
- (b) Amount of loan. The amount of the loan is based on need, not to exceed 25 percent of the operating budget of the local government for the fiscal year in which the disaster occurs. The term fiscal year as used in this subpart means the local government's fiscal year.
- (c) Interest rate. The interest rate is the rate for five year maturities as determined by the Secretary of the Treasury in effect on the date that the Promissory Note is executed. This rate is from the monthly Treasury schedule of certified interest rates which takes into consideration the current average yields on outstanding marketable obligations of the United States, adjusted to the nearest 1/8 percent.
- (d) Time limitation. The Associate Director may approve a loan in either the fiscal year in which the disaster occurred or the fiscal year immediately following that year. Only one loan may be approved under section 417(a) for any local government as the result of a single disaster.
- (e) Term of loan. The term of the loan is 5 years, unless otherwise extended by the Associate Director. The Associate Director may consider requests for an extension of loans based on the local government's financial condition. The total term of any loan under section 417(a) normally may not exceed 10 years from the date the Promissory Note was executed. However, when extenuating circumstances exist and the Community Disaster Loan recipient demonstrates an inability to repay the loan within the initial 10 years, but agrees to repay such loan over an extended period of time, additional time may be provided for loan repayment. (See Sec. 206.367(c).)

- (f) Use of loan funds. The local government shall use the loaned funds to carry on existing local government functions of a municipal operation character or to expand such functions to meet disaster-related needs. The funds shall not be used to finance capital improvements nor the repair or restoration of damaged public facilities. Neither the loan nor any cancelled portion of the loans may be used as the non-Federal share of any Federal program, including those under the Act.
- (g) Cancellation. The Associate Director shall cancel repayment of all or part of a Community Disaster Loan to the extent that he/she determines that revenues of the local government during the 3 fiscal years following the disaster are insufficient to meet the operating budget of that local government because of disaster-related revenue losses and additional unreimbursed disaster-related municipal operating expenses.
- (h) Relation to other assistance. Any community disaster loans including cancellations made under this subpart shall not reduce or otherwise affect any commitments, grants, or other assistance under the Act or these regulations.

§ 206.362 Responsibilities.

- (a) The local government shall submit the financial information required by FEMA in the application for a Community Disaster Loan and in the application for loan cancellation, if submitted, and comply with the assurances on the application, the terms and conditions of the Promissory Note, and these regulations. The local government shall send all loan application, loan administration, loan cancellation, and loan settlement correspondence through the GAR and the FEMA Regional Office to the FEMA Associate Director.
- (b) The GAR shall certify on the loan application that the local government can legally assume the proposed indebtedness and that any proceeds will be used and accounted for in compliance with the FEMA-State Agreement for the major disaster. States are encouraged to take appropriate pre-disaster action to resolve any existing State impediments which

would preclude a local government from incurring the increased indebtedness associated with a loan in order to avoid protracted delays in processing loan application requests in major disasters or emergencies.

- (c) The Regional Director or designee shall review each loan application or loan cancellation request received from a local government to ensure that it contains the required documents and transmit the application to the Associate Director. He/she may submit appropriate recommendations to the Associate Director.
- (d) The Associate Director, or a designee, shall execute a Promissory Note with the local government, and the Office of Disaster Assistance Programs in Headquarters, FEMA, shall administer the loan until repayment or cancellation is completed and the Promissory Note is discharged.
- (e) The Associate Director or designee shall approve or disapprove each loan request, taking into consideration the information provided in the local government's request and the recommendations of the GAR and the Regional Director. The Associate Director or designee shall approve or disapprove a request for loan cancellation in accordance with the criteria for cancellation in these regulations.
- (f) The Comptroller shall establish and maintain a financial account for each outstanding loan and disburse funds against the Promissory Note.

§ 206.363 Eligibility Criteria.

- (a) Local government.
 - (1) The local government must be located within the area designated by the Associate Director as eligible for assistance under a major disaster declaration. In addition, State law must not prohibit the local government from incurring the indebtedness resulting from a Federal loan.
 - (2) Criteria considered by FEMA in determining the eligibility of a local government for a Community Disaster Loan include the loss of tax and other revenues as a result of a major

disaster, a demonstrated need for financial assistance in order to perform its governmental functions, the maintenance of an annual operating budget, and the responsibility to provide essential municipal operating services to the community. Eligibility for other assistance under the Act does not, by itself, establish entitlement to such a loan.

(b) Loan eligibility

- (1) General. To be eligible, the local government must show that it may suffer or has suffered a substantial loss of tax and other revenues as a result of a major disaster or emergency and must demonstrate a need for financial assistance in order to perform its governmental functions. Loan eligibility is based on the financial condition of the local government and a review of financial information and supporting justification accompanying the application.
- (2) Substantial loss of tax and other revenues. The fiscal year of the disaster or the succeeding fiscal year is the base period for determining whether a local government may suffer or has suffered a substantial loss of revenue. Criteria used in determining whether a local government has or may suffer a substantial loss of tax and other revenue include the following disaster-related factors:
 - (i) Whether the disaster caused a large enough reduction in cash receipts from normal revenue sources, excluding borrowing, which affects significantly and adversely the level and/or categories of essential municipal services provided prior to the disaster;
 - (ii) Whether the disaster caused a revenue loss of over 5 percent of total revenue estimated for the fiscal year in which the disaster occurred or for the succeeding fiscal year;
- (3) Demonstrated need for financial assistance. The local government must demonstrate a need for financial assistance in order to perform its governmental functions. The criteria used in making this determination include the following:

- (i) Whether there are sufficient funds to meet current fiscal year operating requirements;
- (ii) Whether there is availability of cash or other liquid assets from the prior fiscal year;
- (iii) Current financial condition considering projected expenditures for governmental services and availability of other financial resources;
- (iv) Ability to obtain financial assistance or needed revenue from State and other Federal agencies for direct program expenditures;
- (v) Debt ratio (relationship of annual receipts to debt service);
- (vi) Ability to obtain financial assistance or needed revenue from State and other Federal agencies for direct program expenditures;
- (vii) Displacement of revenue-producing business due to property destruction;
- (viii) Necessity to reduce or eliminate essential municipal services; and
- (ix) Danger of municipal insolvency.

§ 206.364 Loan Application.

(a) Application.

- (1) The local government shall submit an application for a Community Disaster Loan through the GAR. The loan must be justified on the basis of need and shall be based on the actual and projected expenses, as a result of the disaster, for the fiscal year in which the disaster occurred and for the 3 succeeding fiscal years. The loan application shall be prepared by the affected local government and be approved by the GAR. FEMA has determined that a local government, in applying for a loan as a result of having suffered a substantial loss of tax and other revenue as a result of a major disaster, is not required to first seek credit elsewhere (see Sec. 206.367(c)).

(2) The State exercises administrative authority over the local government's application. The State's review should include a determination that the applicant is legally qualified, under State law, to assume the proposed debt, and may include an overall review for accuracy for the submission. The Governor's Authorized Representative may request the Regional Director to waive the requirement for a State review if an otherwise eligible applicant is not subject to State administration authority and the State cannot legally participate in the loan application process.

(b) Financial requirements.

(1) The loan application shall be developed from financial information contained in the local government's annual operating budget (see Sec. 206.364(b)(2)) and shall include a Summary of Revenue Loss and Unreimbursed Disaster-Related Expenses, a Statement of the Applicant's Operating Results—Cash Position, a Debt History, Tax Assessment Data, Financial Projections, Other Information, a Certification, and the Assurances listed on the application.

(i) Copies of the local government's financial reports (Revenue and Expense and Balance Sheet) for the 3 fiscal years immediately prior to the fiscal year of the disaster and the applicant's most recent financial statement must accompany the application. The local government's financial reports to be submitted are those annual (or interim) consolidated and/or individual official annual financial presentations for the General Fund and all other funds maintained by the local government.

(ii) Each application for a Community Disaster Loan must also include:

(A) A statement by the local government identifying each fund (i.e. General Fund, etc.) which is included as its annual Operating budget, and

- (B) A copy of the pertinent State statutes, ordinance, or regulations which prescribe the local government's system of budgeting, accounting and financial reporting, including a description of each fund account.
- (2) Operating budget. For loan application purposes, the operating budget is that document or documents approved by an appropriating body, which contains an estimate of proposed expenditures, other than capital outlays for fixed assets for a stated period of time, and the proposed means of financing the expenditures. For loan cancellation purposes, FEMA interprets the term "operating budget" to mean actual revenues and expenditures of the local government as published in the official financial statements of the local government.
 - (3) Operating budget increases. Budget increases due to increases in the level of, or additions to, municipal services not rendered at the time of the disaster or not directly related to the disaster shall be identified.
 - (4) Revenue and assessment information. The applicant shall provide information concerning its method of tax assessment including assessment dates and the dates payments are due. Tax revenues assessed but not collected, or other revenues which the local government chooses to forgive, stay, or otherwise not exercise the right to collect, are not a legitimate revenue loss for purposes of evaluating the loan application.
 - (5) Estimated disaster-related expense. Unreimbursed disaster-related expenses of a municipal operating character should be estimated. These are discussed in Sec. 206.366(b).
- (c) Federal review.
- (1) The Associate Director or designee shall approve a community disaster loan to the extent it is determined that the local government has suffered a substantial loss of tax and other revenues and demonstrates a need for financial assistance to perform its governmental function as the result of the disaster.

- (2) Resubmission of application. If a loan application is disapproved, in whole or in part, by the Associate Director because of inadequacy of information, a revised application may be resubmitted by the local government within sixty days of the date of the disapproval. Decision by the Associate Director on the resubmission is final.
- (d) Community disaster loan.
- (1) The loan shall not exceed the lesser of:
- (i) The amount of projected revenue loss plus the projected unreimbursed disaster-related expenses of a municipal operating character for the fiscal year of the major disaster and the subsequent 3 fiscal years, or
 - (ii) 25 percent of the local government's annual operating budget for the fiscal year in which the disaster occurred.
- (2) Promissory note.
- (i) Upon approval of the loan by the Associate Director or designee, he or she, or a designated Loan Officer will execute a Promissory Note with the applicant. The Note must be co-signed by the State (see Sec. 206.364(d)(2)(ii)). The applicant should indicate its funding requirements on the Schedule of Loan Increments on the Note.
 - (ii) If the State cannot legally cosign the Promissory Note, the local government must pledge collateral security, acceptable to the Associate Director, to cover the principal amount of the Note. The pledge should be in the form of a resolution by the local governing body identifying the collateral security.

(Approved by Office of Management and Budget under Control Number 3067-0034)

§ 206.365 Loan Administration.

- (a) Funding.
- (1) FEMA will disburse funds to the local government when requested, generally in accordance with the Schedule of

Loan Increments in the Promissory Note. As funds are disbursed, interest will accrue against each disbursement.

- (2) When each incremental disbursement is requested, the local government shall submit a copy of its most recent financial report (if not submitted previously) for consideration by FEMA in determining whether the level and frequency of periodic payments continue to be justified. The local government shall also provide the latest available data on anticipated and actual tax and other revenue collections. Desired adjustments in the disbursement schedule shall be submitted in writing at least 10 days prior to the proposed disbursement date in order to ensure timely receipt of the funds. A sinking fund should be established to amortize the debt.

(b) Financial management.

- (1) Each local government with an approved Community Disaster Loan shall establish necessary accounting records, consistent with local government's financial management system, to account for loan funds received and disbursed and to provide an audit trail.
- (2) FEMA auditors, State auditors, the GAR, the Regional Director, the Associate Director, and the Comptroller General of the United States or their duly authorized representatives shall, for the purpose of audits and examination, have access to any books, documents, papers, and records that pertain to Federal funds, equipment, and supplies received under these regulations.

(c) Loan servicing.

- (1) The applicant annually shall submit to FEMA copies of its annual financial reports (operating statements, balance sheets, etc.) for the fiscal year of the major disaster, and for each of the 3 subsequent fiscal years.
- (2) The Headquarters, FEMA Office of Disaster Assistance Programs, will review the loan periodically. The purpose of the reevaluation is to determine whether projected revenue losses, disaster-related expenses, operating budgets, and other factors have changed sufficiently to

warrant adjustment of the scheduled disbursement of the loan proceeds.

- (3) The Headquarters, FEMA Office of Disaster Assistance Programs, shall provide each loan recipient with a loan status report on a quarterly basis. The recipient will notify FEMA of any changes of the responsible municipal official who executed the Promissory Note.
- (d) Inactive loans. If no funds have been disbursed from the Treasury, and if the local government does not anticipate a need for such funds, the note may be cancelled at any time upon a written request through the State and Regional Office to FEMA. However, since only one loan may be approved, cancellation precludes submission of a second loan application request by the same local government for the same disaster.

§ 206.366 Loan Cancellation.

- (a) Policies.
 - (1) FEMA shall cancel repayment of all or part of a Community Disaster Loan to the extent that the Associate Director determines that revenues of the local government during the full three fiscal year period following the disaster are insufficient, as a result of the disaster, to meet the operating budget for the local government, including additional unreimbursed disaster-related expenses for a municipal operating character. For loan cancellation purposes, FEMA interprets the term operating budget to mean actual revenues and expenditures of the local government as published in the official financial statements of the local government.
 - (2) If the tax and other revenue rates or the tax assessment valuation of property which was not damaged or destroyed by the disaster are reduced during the 3 fiscal years subsequent to the major disaster, the tax and other revenue rates and tax assessment valuation factors applicable to such property in effect at the time of the major disaster shall be used without reduction for purposes

of computing revenues received. This may result in decreasing the potential for loan cancellations.

- (3) If the local government's fiscal year is changed during the "full 3 year period following the disaster" the actual period will be modified so that the required financial data submitted covers an inclusive 36-month period.
 - (4) If the local government transfers funds from its operating funds accounts to its capital funds account, utilizes operating funds for other than routine maintenance purposes, or significantly increases expenditures which are not disaster related, except increases due to inflation, the annual operating budget or operating statement expenditures will be reduced accordingly for purposes of evaluating any request for loan cancellation.
 - (5) It is not the purpose of this loan program to underwrite predisaster budget or actual deficits of the local government. Consequently, such deficits carried forward will reduce any amounts otherwise eligible for loan cancellation.
- (b) Disaster-related expenses of a municipal operation character.
- (1) For purpose of this loan, unreimbursed expenses of a municipal operating character are those incurred for general government purposes, such as police and fire protection, trash collection, collection of revenues, maintenance of public facilities, flood and other hazard insurance, and other expenses normally budgeted for the general fund, as defined by the Municipal Finance Officers Association.
 - (2) Disaster-related expenses do not include expenditures associated with debt service, any major repairs, rebuilding, replacement or reconstruction of public facilities or other capital projects, intragovernmental services, special assessments, and trust and agency fund operations. Disaster expenses which are eligible for reimbursement under project applications or other Federal programs are not eligible for loan cancellation.

- (3) Each applicant shall maintain records including documentation necessary to identify expenditures for unreimbursed disaster-related expenses. Examples of such expenses include but are not limited to:
 - (i) Interest paid on money borrowed to pay amounts FEMA does not advance toward completion of approved Project Applications.
 - (ii) Unreimbursed costs to local governments for providing usable sites with utilities for mobile homes used to meet disaster temporary housing requirements.
 - (iii) Unreimbursed costs required for police and fire protection and other community services for mobile home parks established as the result of or for use following a disaster.
 - (iv) The cost to the applicant of flood insurance required under Public Law 93-234, as amended, and other hazard insurance required under section 311, Public Law 93-288, as amended, as a condition of Federal disaster assistance for the disaster under which the loan is authorized.
- (4) The following expenses are not considered to be disaster-related for Community Disaster Loan purposes:
 - (i) The local government's share for assistance provided under the Act including flexible funding under section 406(c)(1) of the Act.
 - (ii) Improvements related to the repair or restoration of disaster public facilities approved on Project Applications.
 - (iii) Otherwise eligible costs for which no Federal reimbursement is requested as a part of the applicant's disaster response commitment, or cost sharing as specified in the FEMA-State Agreement for the disaster.
 - (iv) Expenses incurred by the local government which are reimbursed on the applicant's project application.
- (c) Cancellation application. A local government which has drawn loan funds from the Treasury may request cancellation of the principal and related interest by submitting an Application for

Loan Cancellation through the Governor's Authorized Representative to the Regional Director prior to the expiration date of the loan.

- (1) Financial information submitted with the application shall include the following:
 - (i) Annual Operating Budgets for the fiscal year of the disaster and the 3 subsequent fiscal years;
 - (ii) Annual Financial Reports (Revenue and Expense and Balance Sheet) for each of the above fiscal years. Such financial records must include copies of the local government's annual financial reports, including operating statements balance sheets and related consolidated and individual presentations for each fund account. In addition, the local government must include an explanatory statement when figures in the Application for Loan Cancellation form differ from those in the supporting financial reports.
 - (iii) The following additional information concerning annual real estate property taxes pertaining to the community for each of the above fiscal years:
 - (A) The market value of the tax base (dollars);
 - (B) The assessment ratio (percent);
 - (C) The assessed valuation (dollars);
 - (D) The tax levy rate (mils);
 - (E) Taxes levied and collected (dollars).
 - (iv) Audit reports for each of the above fiscal years certifying to the validity of the Operating Statements. The financial statements of the local government shall be examined in accordance with generally accepted auditing standards by independent certified public accountants. The report should not include recommendations concerning loan cancellation or repayment.
 - (v) Other financial information specified in the Application for Loan Cancellation.
- (2) Narrative justification. The application may include a narrative presentation to amplify the financial material

accompanying the application and to present any extenuating circumstances which the local government wants the Associate Director to consider in rendering a decision on the cancellation request.

(d) Determination.

- (1) If, based on a review of the Application for Loan Cancellation and FEMA audit, when determined necessary, the Associate Director determines that all or part of the Community Disaster Loan funds should be cancelled, the principal amount which is cancelled will become a grant, and the related interest will be forgiven. The Associate Director's determination concerning loan cancellation will specify that any uncanceled principal and related interest must be repaid immediately and that, if immediate repayment will constitute a financial hardship, the local government must submit for FEMA review and approval, a repayment schedule for settling the indebtedness on a timely basis. Such repayments must be made to the Treasurer of the United States and be sent to FEMA, Attention: Office of the Comptroller.
- (2) A loan or cancellation of a loan does not reduce or affect other disaster-related grants or other disaster assistance. However, no cancellation may be made that would result in a duplication of benefits to the applicant.
- (3) The uncanceled portion of the loan must be repaid in accordance with Sec. 206.367.
- (4) Appeals. If an Application for Loan Cancellation is disapproved, in whole or in part, by the Associate Director or designee, the local government may submit any additional information in support of the application within 60 days of the date of disapproval. The decision by the Associate Director or designee on the submission is final.

(Approved by the Office of Management and Budget under Control Number 3067-0026)

§ 206.367 Loan Repayment.

- (a) Prepayments. The local government may make prepayments against a loan at any time without any prepayment penalty.
- (b) Repayment. To the extent not otherwise cancelled, Community Disaster Loan funds become due and payable in accordance with the terms and conditions of the Promissory Note. The note shall include the following provisions:
 - (1) The term of the loan made under this program is 5 years, unless extended by the Associate Director. Interest will accrue on outstanding cash from the actual date of its disbursement by the Treasury.
 - (2) The interest amount due will be computed separately for each Treasury disbursement as follows: $I = P \times R \times T$, where I = the amount of simple interest. P = the principal amount disbursed; R = the interest rate of the loan; and T = the outstanding term in years from the date of disbursement to date of repayment, with periods less than 1 year computed on the basis of 365 days/year. If any portion of the loan is cancelled, the interest amount due will be computed on the remaining principal with the shortest outstanding term.
 - (3) Each payment made against the loan will be applied first to the interest computed to the date of the payment, and then to the principal. Prepayments of scheduled installments, or any portion thereof, may be made at any time and shall be applied to the installments last to become due under the loan and shall not affect the obligation of the borrower to pay the remaining installments.
 - (4) The Associate Director may defer payments of principal and interest until FEMA makes its final determination with respect to any Application for Loan Cancellation which the borrower may submit. However, interest will continue to accrue.
 - (5) Any costs incurred by the Federal Government in collecting the note shall be added to the unpaid balance of the loan, bear interest at the same rate as the loan, and be immediately due without demand.

- (6) In the event of default on this note by the borrower, the FEMA claims collection officer will take action to recover the outstanding principal plus related interest under Federal debt collection authorities, including administrative offset against other Federal funds due the borrower and/or referral to the Department of Justice for judicial enforcement and collection.
- (c) Additional time. In unusual circumstances involving financial hardship, the local government may request an additional period of time beyond the original 10 year term to repay the indebtedness. Such request may be approved by the Associate Director subject to the following conditions:
 - (1) The local government must submit documented evidence that it has applied for the same credit elsewhere and that such credit is not available at a rate equivalent to the current Treasury rate.
 - (2) The principal amount shall be original uncanceled principal plus related interest.
 - (3) The interest rate shall be the Treasury rate in effect at the time the new Promissory Note is executed but in no case less than the original interest rate.
 - (4) The term of the new Promissory Note shall be for the settlement period requested by the local government but not greater than 10 years from the date the new note is executed.

§§ 206.368-206.389 [Reserved]

Subpart L-Fire Suppression Assistance

Source: 55 FR 2318, Jan. 23, 1990, unless otherwise noted.

§ 206.390 General.

When the Associate Director determines that a fire or fires threaten such destruction as would constitute a major disaster, assistance may be authorized, including grants, equipment, supplies, and

personnel, to any State for the suppression of any fire on publicly or privately owned forest or grassland.

§ 206.391 FEMA-State Agreement.

Federal assistance under section 420 of the Act is provided in accordance with a continuing FEMA-State Agreement for Fire Suppression Assistance (the Agreement) signed by the Governor and the Regional Director. The Agreement contains the necessary terms and conditions, consistent with the provisions of applicable laws, Executive Orders, and regulations, as the Associate Director may require, and specifies the type and extent of Federal assistance. The Governor may designate authorized representatives to execute requests and certifications and otherwise act for the State during fire emergencies. Supplemental agreements shall be executed as required to update the continuing Agreement.

§ 206.392 Request for Assistance.

When a Governor determines that fire suppression assistance is warranted, a request for assistance may be initiated. Such request shall specify in detail the factors supporting the request for assistance. In order that all actions in processing a State request are executed as rapidly as possible, the State may submit a telephone request to the Regional Director, promptly followed by a confirming telegram or letter.

(Approved by the Office of Management and Budget under the Control Numbers 3067-0066)

§ 206.393 Providing Assistance.

Following the Associate Director's decision on the State request, the Regional Director will notify the Governor and the Federal firefighting agency involved. The Regional Director may request assistance from Federal agencies if requested by the State. For each

fire or fire situation, the State shall prepare a separate Fire Project Application based on Federal Damage Survey Reports and submit it to the Regional Director for approval.

§ 206.394 Cost Eligibility.

- (a) Cost principles. See 44 CFR 13.22, Allowable Costs, and the associated OMB Circular A-87, Cost Principles for State and Local Governments.
- (b) Program specific eligible costs.
 - (1) Expenses to provide field camps and meals when made available to the eligible employees in lieu of per diem costs.
 - (2) Costs for use of publicly owned equipment used on eligible fire suppression work based on reasonable State equipment rates.
 - (3) Costs to the State for use of U.S. Government-owned equipment based on reasonable costs as billed by the Federal agency and paid by the State. Only direct costs for use of Federal Excess Personal Property (FEPP) vehicles and equipment on loan to State Forestry and local cooperators, can be paid.
 - (4) Cost of firefighting tools, materials, and supplies expended or lost, to the extent not covered by reasonable insurance.
 - (5) Replacement value of equipment lost in fire suppression, to the extent not covered by reasonable insurance.
 - (6) Costs for personal comfort and safety items normally provided by the State under field conditions for firefighter health and safety.
 - (7) Mobilization and demobilization costs directly relating to the Federal fire suppression assistance approved by the Associate Director.
 - (8) Eligible costs of local governmental firefighting organizations which are reimbursed by the State pursuant to an existing cooperative mutual aid agreement, in suppressing an approved incident fire.
 - (9) State costs for suppressing fires on Federal land in cases in which the State has a responsibility under a cooperative

agreement to perform such action on a non-reimbursable basis. This provision is an exception to normal FEMA policy under the Act and is intended to accommodate only those rare instances that involve State fire suppression of section 420 incident fires involving co-mingled Federal/State and privately owned forest or grassland.

(10) In those instances in which assistance under section 420 of the Act is provided in conjunction with existing Interstate Forest Fire Protection Compacts, eligible costs are reimbursed in accordance with eligibility criteria established in this section.

(c) Program specific ineligible costs.

(1) Any costs for presuppression, salvaging timber, restoring facilities, seeding and planting operations.

(2) Any costs not incurred during the incident period as determined by the Regional Director other than reasonable and directly related mobilization and demobilization costs.

(3) State costs for suppressing a fire on co-mingled Federal land where such costs are reimbursable to the State by a Federal agency under another statute (see 44 CFR part 151).

§ 206.395 Grant Administration.

(a) Project administration shall be in accordance with 44 CFR part 13, and applicable portions of subpart G, 44 CFR part 206.

(b) In those instances in which reimbursement includes State fire suppression assistance on co-mingled State and Federal lands (§206.394(b)(9)), the Regional Director shall coordinate with other Federal programs to preclude any duplication of payments. (See 44 CFR part 151.)

(c) Audits shall be in accordance with the Single Audit Act of 1984, Pub. L. 98-502. (See subpart G of this part.)

(d) A State may appeal a determination by the Regional Director on any action related to Federal assistance for fire suppression. Appeal procedures are contained in 44 CFR 206.206.

§§ 206.396-206.399 [Reserved]